

UNITED STATES DISTRICT COURT

for the
District of Oregon
Portland Division

Samuel Patrick Wolanyk
Plaintiff

vs.

City of Portland, Oregon
Rebecca Esau
Lee Gonzales
Defendants

Case No. 3:23-cv-1349-YY

Jury Trial Demanded

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Non-Prisoner Complaint)

I. The Parties to This Complaint

A. The Plaintiff

Name	Samuel Patrick Wolanyk
Address	5235 NE 42nd Ave Portland, OR 97218
County	Multnomah
Telephone Number	619-887-6776
Email Address	samwolanyk@gmail.com

B. The Defendants

Defendant No. 1

Name	City of Portland - in its Official Capacity
Job or Title	Office of the City Attorney
Address	1221 SW 4th Ave Suite 430 Portland, OR 97204
County	Multnomah
Telephone Number	503-823-4047
Email Address	cityattorneysoffice@portlandoregon.gov

Defendant No. 2

Name	Rebecca Esau - in her Individual Capacity
Job or Title	Director, Bureau of Development Services
Address	1900 SW 4th Ave, First Floor Portland, OR 97201
County	Multnomah
Telephone Number	503-823-7300
Email Address	director.esau@portlandoregon.gov

Defendant No. 3

Name	Lee Gonzales - in his Individual Capacity
Job or Title	Housing Inspector
Address	1900 SW 4th Ave, Suite #5000 Portland, OR 97201
County	Multnomah
Telephone Number	503-823-8169
Email Address	lee.gonzalez@portlandoregon.gov

II. Basis For Jurisdiction

The basis for federal court jurisdiction arises from 28 USC § 1331.

Under 42 U.S.C. § 1983, Plaintiff may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].”

Plaintiff alleges deprivation of his 1st, 4th, and 14th amendments under the US Constitution, as well as deprivation of his fundamental rights to the possession, use and enjoyment of property.

III. Statement of Claim

Introduction

The City of Portland claims it has a shortage of affordable housing, and it is the City’s own policies that unconstitutionally deprive owners of their right to develop real estate to create the additional housing to sate demand.

Plaintiff is sole owner of a property in Portland, Oregon. The City has no ownership, rights or interest in the property and has admitted as much.

At time of purchase in 2016, the property at issue was zoned R1, which allowed for multiple dwelling units. The lot was located on a corner with a single house on the front half, while the back half contained piles of trash, a dilapidated one-car garage filled with refuse and a broken-down car abandoned on the dirt driveway.

Plaintiff purchased the property with the intent to clean it up and build an additional structure on the back half of the lot, with two living units over struc-

1 tured parking. This was in accordance with Portland zoning code that required
2 Plaintiff to build a minimum of two additional units.

3 Beginning in 2016, Plaintiff made a good-faith effort to decipher and
4 comply with Portland Building Development Services (hereinafter “BDS”) regu-
5 lations. Plaintiff relied on the plain-language meaning of the zoning code. Where
6 an interpretation of ambiguous code was necessary, Plaintiff relied on the word of
7 BDS officials. Plaintiff proceeded by right and as written, asking for no variances
8 or discretionary determinations.

9
10 On August 17, 2022, after enduring six years of delay, tens of thousands of
11 dollars of fees, multiple plan submissions, an illegal exaction attempt by the City,
12 a de-facto refusal to communicate by BDS, no permit issued and with no end in
13 sight, Plaintiff started his build.

14 Plaintiff was and is working from drawings fully in compliance with the
15 zoning and building codes. Plaintiff’s plans are engineered and stamped by a duly
16 licensed Oregon engineer. Plaintiff’s project meets or exceeds code requirements,
17 the site is clean and orderly, there is no erosion, excessive noise, noxious fumes or
18 any peril to the public health, public safety, public morals or general welfare. Nor,
19 to Plaintiff’s knowledge, has there been any such allegation by any member of the
20 public.

21
22 On September 22, 2022 Plaintiff was visited on his job site by a BDS code
23 enforcement official and offered a stop-work order. Plaintiff declined acceptance
24 of the order, as he is not in the employ of the City and his property is not owned
25 by the City.

26 Plaintiff was subsequently mailed a similar notice by the official, and then
27 shortly thereafter received official notices that a lien had been placed on his prop-
28

erty by the City of Portland. Those monthly notifications continue to the present, with fees, penalties and interest accruing every month.

On October 26, 2022 there was a single phone call with a BDS supervisor who offered to attempt to put together a team to move the permitting process along. Plaintiff indicated he was willing to participate, subject to the process being straightforward and reasonably priced. There was no further communication from BDS. Plaintiff emailed the supervisor as requested, and there was no reply. Phone calls to BDS have gone unreturned, so with the one-year date closing in, Plaintiff decided to file suit to preserve his rights and attempt to reach a resolution in this matter.

First Cause of Action

Plaintiff is an artist who creates large pieces of performance art for human beings to view and experience. He has created one other multi-story house, two complete Burning Man camp offerings, a site-deployable artistic festival shelter, and an all-amenities off-road camp vehicle dubbed the “Apocalypse Trailer.” Most of these works were designed and built solely by the Plaintiff, two were executed with the help of community members working at the artist’s direction.

The building in question was designed and is being built by Plaintiff as a critique of the local government, specifically BDS’ convoluted regulations and arbitrary interpretations, and as a political statement of the necessity of providing for oneself and family as an asset to the community. It includes a space for rooftop food production, rainwater collection cisterns, sprung performance dance floor, secure enclosed parking and a maker’s space for wood and metal artworks. It is also a visual and functional example of how a building can be contorted by regulation -however well-intentioned- and how a determined man can utilize

1 loopholes in stifling regulation to create something valuable and functional. As
2 such, it represents politically relevant expression.

3
4 Furthermore, work on the building was initiated in response to Portland
5 City council, the mayor, and the district attorney's tacit approval of the theft, ar-
6 son and property destruction committed by criminals who used the Citywide po-
7 lice-abuse protests as cover for their actions. The City's mayor was forced to
8 change his residence after persons set his condominium building on fire. Port-
9 land's district attorney generally refuses to prosecute persons accused of crimes
10 against property. "It's only property" they say, "insurance will cover it" -com-
11 pletely ignoring the fact that the existence of property is usually a direct result of
12 the productive application of one's life.

13 It is easier to destroy than create. They burn, I'll build.

14 The City demoted felony theft to "unauthorized use of a motor vehicle"
15 and stood by as automobile theft rocketed to around sixty vehicles per day. Plain-
16 tiff's own vehicle was stolen and destroyed within days of being parked on the
17 street, and while Portland threatens Plaintiffs garage build, Plaintiff takes the time
18 every night to disable his wife's vehicle to prevent its theft by other than tow
19 truck.

20
21 It is well-established that government agencies -including police agencies-
22 have no duty to provide protection to the citizenry. We are all responsible for our
23 own personal safety. Plaintiff's project is a functional political statement of accep-
24 tance of that fact, and the state cannot interfere with this free expression.

25 To deny Plaintiff the ability to create such a work of art, or to interfere
26 with his efforts through a claim of unquestionable police power, unreasonable de-
27 lay, obfuscation or over-broad, arbitrary interpretation of poorly-written regula-
28 tions, or outright threat of fine or forfeiture without due process is a violation of

1 his First Amendment rights...and, ironically, the perfect commentary on the build-
2 ing's raison d'être.

3
4 **First Prayer for Relief**

5 Plaintiff respectfully requests that the Court issue an order enjoining the
6 City and its employees from violating Plaintiff's free speech rights and fundamen-
7 tal property rights.

8 Plaintiff respectfully requests that the Court issue an order that the Defen-
9 dants remove any and all code enforcement liens from the Plaintiffs property.

10 Plaintiff respectfully requests that the Court issue an injunction enjoining
11 Defendants from committing similar crimes in the future.

12
13 **Second Cause of Action**

14
15 The City of Portland has no ownership, rights or interest in Plaintiff's
16 property, just as the Plaintiff has no personal ownership or interest in the City's
17 property. The City is free to use, acquire, dispose of, encumber, build or destroy
18 its own property however it likes, asking permission of no one, as long as it rea-
19 sonably does no harm to anyone else.

20 Plaintiff enjoys the same rights in his secured right to acquire, possess, and
21 protect property to the exclusion of all others. To require some sort of review en
22 route to granting permission to exercise an otherwise fundamental right to proper-
23 ty is tantamount to prior restraint and a violation of both the First Amendment and
24 the Fourteenth Amendment.

Second Prayer for Relief

Plaintiff respectfully requests that the Court issue an order enjoining the City and its employees from violating Plaintiff's fundamental property rights and free speech rights.

Plaintiff respectfully requests that the Court issue an order that the Defendants remove any and all code enforcement liens from the Plaintiffs property.

Plaintiff respectfully requests that the Court issue an injunction enjoining Defendants from committing similar crimes in the future.

Third Cause of Action

Portland BDS and its officials and employees willfully violated Plaintiff's Due Process rights. The City of Portland may have granted itself all kinds of extraordinary powers in its City charter, but for those powers to be valid they must still square with the United States and Oregon Constitutions.

Plaintiff is guaranteed due process before being deprived of property: Among other things, this includes a public hearing, a trial by jury, an impartial judiciary, the right to confront his accusers, to present and examine evidence, and to implore the jury to examine the law as well as the facts.

There was no hearing, no trial, no summons, no conviction, no jury, and no finding by an impartial trier of fact. Portland BDS officials skipped over all this and went straight from red tag to lien and are now harassing Plaintiff with mailed lien notices.

Defendants should also be aware that sending unsubstantiated claims and demands for payment of monetary value through the United States Postal Service might constitute mail fraud under Title 18 USC 1341 and extortion under Oregon

1 Revised Statutes § 164.075. Further, filing an unsubstantiated lien or otherwise
2 simulating legal process is a felony under ORS § 162.355.

3 If the City believes Plaintiff is in violation of the law they are free to make
4 their case in a court of record, in accordance with all applicable law, statute and
5 tradition. For the City to decline to do so does not visit an automatic finding of
6 liability on the part of the Plaintiff. Nor is the City allowed to deny Plaintiff his
7 trial rights under the Sixth Amendment or his secured rights to Due Process under
8 the Fourteenth Amendment.

9 10 **Third Prayer for Relief**

11 Plaintiff respectfully requests that the Court issue an order enjoining the
12 City and its employees from violating Plaintiff's fundamental Due Process rights
13 under the Fourteenth Amendment.

14 Plaintiff respectfully requests that the Court issue an order enjoining the
15 City and its employees from violating Plaintiff's fundamental trial rights under
16 the Sixth Amendment.

17 Plaintiff respectfully requests that the Court issue an order that the Defen-
18 dants remove any and all code enforcement liens from the Plaintiffs property.

19 Plaintiff respectfully requests that the Court issue an injunction enjoining
20 Defendants from committing similar crimes in the future.

21 22 **Fourth Cause of Action**

23 Assuming *arguendo* that this Court finds that Portland does have the pow-
24 er and right to impose some permitting requirements, Plaintiff alleges that the
25 City does so in a manner violative of Constitutional rights.
26
27
28

1 When imposing development fees or conditions, the City of Portland has a
2 history of ignoring applicable US Supreme Court rulings: *Nollan v. California*
3 *Coastal Commission*, *Dolan v. City of Tigard* and *Koontz v. St. Johns River Water*
4 *Management District*. As a result of those cases, Supreme Court rulings require
5 that a permitting authority impose real-property exactions or monetary fees rough-
6 ly proportional to the impact of development, and that the authority make an indi-
7 vidualized determination of what the nature and extent of that impact will be.

8 The City of Portland is well known for having some of the highest permit-
9 ting fees in the nation, and routinely requires exactions of money or property as a
10 condition of issuing a permit. Most applicants comply out of fear, frustration or
11 ignorance. But in the event that an applicant tries to protest such a taking, the City
12 requires the applicant to pay a non-refundable \$250 fee to do so. This is a viola-
13 tion of the First, Fourth, and Fourteenth amendments of the US Constitution. The
14 City cannot violate a citizen's rights and then charge a fee to protest!

15 Constitutional rights do not expire. However if Portland BDS admits that
16 an imposed exaction was not warranted, they stipulate that their decision expires
17 in 180 days- at which point the applicant must pay another \$250 and begin the
18 process again.

20 **Fourth Prayer for Relief**

21 Plaintiff respectfully requests that the Court issue an order for BDS to re-
22 fund Plaintiff's \$250 appeal fee.

23 Plaintiff respectfully requests that the Court issue an order that every de-
24 partment of BDS seeking to impose a fee or exaction must make an individualized
25 determination of the nature and extent of the impact necessitating the fee or exac-
26 tion, and deliver that determination in writing to the applicant.

1 Plaintiff respectfully requests that the Court issue an order requiring BDS
2 to advise applicants of their right to contest any proposed exaction.

3 Plaintiff respectfully requests that the Court issue an order that BDS can-
4 not charge applicants a fee to appeal an exaction condition.
5

6 Fifth Cause of Action

7 Assuming *arguendo* that this Court finds that Portland does have the pow-
8 er and right to impose some permitting requirements, Plaintiff alleges that the
9 City does so in an unconstitutional manner.
10

11 Portland BDS officials interpret and apply the zoning and building codes
12 arbitrarily, and BDS management is aware of this. BDS requires permit applicants
13 to design structures to adhere to interpretations of code as advised by lower-tier
14 BDS agents, only to have upper-level BDS application review agents deny permit
15 approval via a differing interpretation of code. BDS then claims that this problem
16 is for the permit applicant to solve and that BDS has no liability or responsibility
17 for the actions or interpretations of any of their agents.

18 The effect is that substantial architect and structural engineering fees com-
19 pound upon the applicant. This unreasonably encumbers Plaintiff's right to devel-
20 op and enjoy his property and is a violation of the fundamental right to property.
21

22 Preliminary (i.e., before the first round of complete design and engineer-
23 ing) access to upper-tier BDS decision-makers is denied to applicants unless the
24 applicant pays additional fees amounting to thousands of dollars. Applicants face
25 the Hobson's choice of spending thousands of dollars on a "yes-you-can, oops-no-
26 you-can't (not our problem!)" design or spending thousands of dollars just to have
27 access to the government agents that hold sway over a proposed project. This
28 practice is the definition of arbitrariness and capriciousness, and Citizens should

1 not be forced to choose. A government agency that substantially encumbers a fun-
2 damental right ought to have its costs and processes clearly established and avail-
3 able to all.

4 **Fifth Prayer for Relief**

5
6 Plaintiff respectfully requests that the Court issue an order that every BDS
7 official is to state their code interpretation in writing, and that BDS guarantee that
8 applicants can rely on that interpretation to be unchanging.

9
10 Plaintiff respectfully requests that, if the Court finds Defendants have the
11 power to encumber Plaintiff's property rights, that the Court issue a ruling that
12 Plaintiff can rely on his reasonable interpretation of Portland zoning and building
13 codes.

14 **Sixth Cause of Action**

15
16 Portland BDS knows that their processes and procedures are opaque, bur-
17 densome and costly and unreasonably encumber the fundamental right to proper-
18 ty. However, through the Empowered Communities Program, the City of Portland
19 does offer one-on-one support through the building permit process. BDS will
20 "walk you through the process" but only if you're Black, Indigenous or a Person
21 of Color. Plaintiff is White, or the "wrong color" per BDS officials and therefore
22 has been denied access or equivalent assistance. This is a violation of the Four-
23 teenth Amendment which guarantees equal protection of the laws.

24 **Sixth Prayer for Relief**

25
26 Plaintiff respectfully requests that the Court issue an order that Portland
27 BDS is to make its assistance available to all applicants without regard to their
28 race, color, sex, sexual orientation or any other protected class.

Summation

I do not bring this case in pursuit of a big monetary payoff. I just want
Portland BDS to quit trampling my rights and get out of my way.

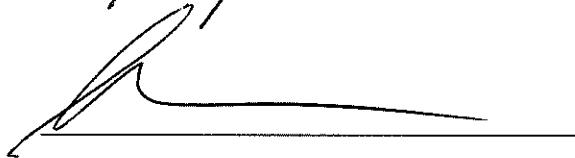
IV. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

Date of Signing:

9/15/2023

Signature of Plaintiff



Printed Name of Plaintiff

Sam Wolanyk